IN THE UNITED STATES SUPREME COURT

OCTOBER TERM 1980

JOHN R. SITTON

VS

THE STATE OF TEXAS

NO. 80-5904

STATEMENT OF JURISDICTION

AND/OR

PETITION FOR WRIT OF CERTIORARI

OR

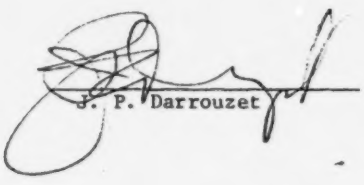
ATTORNEY FOR APPELLANT-PETITIONER

J. P. Darrouzet
Counsellor at Law
Suite No. G-10
812 San Antonio
Austin TX 78701

512 477 4210

Member of the Bar of the
United States Supreme Court

The "record" in this case is so short and the citations are so few in number that and index, list of authoirities and appendix isn't felt to be necessary; accordingly leave is respectfully prayed to omit the same.



J. P. Darrouzet

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

JOHN R. SITTON,
PETITIONER

VS

NO. _____

THE STATE OF TEXAS,
RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

(28 USC §1915: Supreme Court
[herein SC] Rule 53)

TO THE HONORABLE COURT:

This case arose in the Municipal Court of Austin, Travis County, Texas. On February 21st, 1980, JOHN R. SITTON, Appellant herein (Defendant below) was given a ticket, Art. 6701d, Sec. 148 TCS, for Speeding, Art 6701d, Sec. 166 TCS. He was convicted by said Municipal Court and appealed the case to the County Court at Law No. One of Travis County, Texas, which transferred the case to County Court at Law No. Two of Travis County, Texas.

After SITTON'S MOTION TO QUASH was overruled, he was, on July 17th, 1980, tried by a jury and found guilty and punished by a fine of $25.00. On August 14th, 1980, the Court imposed the sentence and entered judgment against SITTON for the assessed fine.

The "record" of this "sentence", Art. 42.02 TCCrP and "judgment", Art. 42.01 TCCrP, are with the Hon. Doris Shropshire, County Clerk for Travis County, Texas, with offices in the County Courthouse in Austin, Travis County, Texas 78701 (512: 477-6188); and nowhere else, since this finalizes the case under the Texas Constitution, the Texas Statutory Law, the Texas Case Law, all as heretofore recognized by this Court.

Art. V, Sec. 5, Texas Constitution; Art. 4.03 TCCrP; WILLIAMS 339 SW(2) 63 (1960); ABRAMS 563 SW(2) 610 (1978); LARGENT 318 US 418, 87 LE 873, ____SC____(1942); BROWN ____ US____, 61 LE(2) 357, 99 SC ____(1979).

It is the intention of JOHN R. SITTON to proceed with this case. It is the intention of the undersigned attorney to carry it forward at no fee.

JOHN R. SITTON is indigent; he has some money, but an insufficient amount to foot the necessary costs (fees, expenses and attorney's fees) of this case. He has paid the undersigned some monies relative to other matters and $60.00 regarding this case, but has paid him no other monies. The undersigned has received nothing else for this case nor has he contracted for further payments, directly or indirectly.

The undersigned attorney feels that this case is meritorious and that the matter is of the utmost importance; that this is a case where constitutional rights are being overrun by the State of Texas; it is a case in which the Statute is so vague and overbroad that the rights of all peoples are being invaded contrary to the United States Constitution; and it is one in which the Court should intrude so that justice may be achieved.

Pursuant then, according to 28 USC Sec. 1915, the undersigned attorney hereby, under oath, says:

1. JOHN R. SITTON is unable to give costs or give security for the costs (or to pay a fee) of this lawsuit;

2. That JOHN R. SITTON is threatened by Art. 6701d, Sec. 166 TCS as enacted and as enforced by Respondent; and

3. JOHN R. SITTON and his attorney believe and allege it to be a fact that SITTON is entitled to redress before this Court; and further say that such redress is sought in good faith - all being made more manifest in the documents for Appeal and/or Certiorari attached hereto and the contents of which are incorporated herein the same as if here written word for word.

Further, attached hereto is an AFFIDAVIT of indigency by JOHN R. SITTON.

ACCORDINGLY, leave is requested to proceed in forma pauperis in this matter; that the Petition accompanying this Motion be filed; and that on final hearing hereof, justice be done.

RESPECTFULLY SO REQUESTED,

J. P. Darrouzet
Counsellor at Law
Suite No. G 10
812 San Antonio
Austin TX 78701
512 477 4210

(Member of the Bar of the Supreme Court of the United States)

ATTORNEY FOR PETITIONER,
JOHN R. SITTON

THE STATE OF TEXAS (
(
(
COUNTY OF TRAVIS (

BEFORE ME, the undersigned authority, on this day personally appeared J. P. DARROUZET who, upon his oath duly administered by me, deposed and said:

I am J. P. Darrouzet. I am an attorney and I am competent to give this affidavit. I hereby swear that all of the factual matters set forth in the foregoing MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS are true and correct to my own knowledge and belief.

J. P. Darrouzet

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this 12th day of Nov, 1980, to certify which witness my hand and seal of office.

Richard L Stocks
Notary Public in and for
Travis County, T e x a s

AFFIDAVIT

28 USC 1915

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared JOHN R. SITTON who, upon his oath duly administered by me, deposed and said:

My name is John R. Sitton. I am the same person who was convicted of speeding in Cause No. 189,711 in the County Court at Law No. Two of Travis County, Texas (formerly No. 820694 in the Municipal Court of Austin, Travis County, Texas). I am indigent. I have no assets of any kind whatsoever. I have no credit; I have no friends from whom I can borrow money; I am indigent and destitute.

I was in such condition at the time of my trial before July of 1980, and have remained the same since. I am unable to pay costs herein or give security for same.

I have authorized J. P. DARROUZET of Austin, Travis County, Texas, to proceed with the Appeal of this case to its final conclusion, wherever that may end, including the Supreme Court of the United States.

John R. Sitton
JOHN R. SITTON

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the 19th day of August, 1980.

Carolyn T. Marshall
Notary Public in and for
Travis County, Texas

CAROLYN T. MARSHALL
Notary Public, in and for Travis County, Texas
My Commission Expires December 31, 1980

RECEIVED
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SUPREME COURT, U.S.

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM 1980

JOHN R. SITTON

vs NO. 80-5904

THE STATE OF TEXAS

STATE OF JURISDICITION ON APPEAL

and/or

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE COURT:

INTRODUCTION

A.

Sittorn was convicted of speeding in the Municipal Court of Austin, Travis County, Texas and appealed to the County Court at Law System of the State of Texas . He was found guilty and finded $25.00 by a jury. He desires to seek review in this case and his only Court is this one.

B.

Sitton is indigent as the affidavit attached to the Motion to proceed in Forma Pauperis attests. The undersigned attorney is not receiving any fee for this case nor has he been directly or indirectly promised one.

C.

Abbreviations would appear to speak for themselves. And to reduce reduncancy to a minimum this document shall combine the Statement and the Petition.

D.

This case is unreported in that the County Court at Law No. Two of Travis County, Texas is the Court of last resort under Texas law. BROWN v US ____US_____, 61 LE(2) 357, 99 SC _____ (1979). The "record of the case" is maintained by Hon. Doris Shropshire, County Clekr, County Court House, Austin Travis County, Texas 78701 (512/477 6188) No "opinion" exists in the case as the County Court at Law No. Two of Austin, Travis County, Texas is not a Court of Record.

E.

Sitton was charged with speeding under Art. 6701d, Sec. 166(a) TCS which reads that no person shall drive on a highway

> "... at a speed greater than is reasonable and prudent under the cirucmstances then existing."

and further says that unless - due to circumstances - a lower speed is required:

> " ... any speed in excess of the limits specified ...shall be prima facie evidence that the speed is not reasonalbe or prudent and that it is unlawful:
>
> 1. Thirty (30) miles per hour in any urban district." *

F.

Sitton was tried in said County Court at Law No. Two on 7/17/80 by a jury which returned its verdict the same day fining Sitton $25.00. On August 15th, 1980 the Court declared its judgment (Art. 42.01 TCCrP) which was made into an order pronouncing judgment on the same date (Art. 42.02 TCCrP).

G.

This Court has appellate jurisdicition under 28 USC 1257 (2) and certiorari jurisdictiion under 28 USC 1257 (3)

H.

BROWN 61 LE(2) 357, supra sustains this court' s jurisdicition; and the Constitutional provisions involved here are the 5th, 6th and 14th Amendments to the US Constitution and the Statutory provision involved are Art. 6701d, Sec. 166 et se q, Texas Civil Statutes (TCS).

I

The appellatequestion is:

> Did the Trial court err in deciding that Art. 6701d, Sec. 166 TCS et seq., is valid against Sitton's claim that the same is repugnant to the Constitution of the United States?

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*"Urban District" is defined in Art. 6701d, Sec. 166 (a)(5)(c) TCS. It is also defined in Art. 6701d, Sec. 9(d) TCS. Cf. Art. 6701d, Sec. 17(a,b) TCS defining "business district" and "resident district".

The Certiorari question is:

> Essentially the same for the validity of the statute was "drawn into question on the ground of its being repugnant to the" US Constitution . Texas action is of urgent nature and should be scrutinized by this Court; it was probably contrary to the way this Court would (and has in the past) hold; and the Trial Court so far departed from the standards of due process and fairness that this Court should supervisionarily intervene.

J

The witness Alexander clocked Sitton at a speed greater than the prima facie limit where it was done. Aparet from alot of residences, there were no immediate hazards in the area. Sitton claims he wasn't going over the prima facie limit.

K.

Before the case went to trial Sitton challenged the validity of Art. 6701d, Sec. 166 et seq. via a Motion to Quash and again before the case went to the jury the Motion to Quash was reurged upon the Court which overulled the matter.

1. Art. 6701d, Sec. 166 TCS et seq. is unconsitutional because Texas , by legislation requires a culpable state of mind and the Court held that it didn't need one.

   Art. 6.06 PC

   MORISSETTE v US 342 US 246; 96 LE 288; /2 SC 240

2. Art. 6701d, Sec. 166 TCS et seq is unconstitutional because it sets no standards (other than a presumption, see below) and accordingly is void for vagueness.

   PAPACHRISTOU 31 LE(2) 110 (1972)
   PLUMMER 38 LE(2) 3
   NORWELL 38 LE(2) 170
   GESS 38 LE(2) 303
   HARRISS 98 LE 989
   WINTERS 92 LE 840

   NOWAK: Constitutional 1978 p.726 et seq.

3. Art. 6701d, Sec. 166 TCS is unconstitutional in that conviction under the same must (and certainly did in the case at bar) rest upon a presumption which does not flow from the proven fact beyond a reasonable doubt.

This argument rest upon the State law of Texas that requires the proof of the essential elements of any offense and makes it clear that the essential element (or rather one essential element)of speeding is un-reasonableness and im-prudency.

SANDSTROM v MONTANA 61 LE(2) 39
ULSTER COUNTY COURT v ALLEN
60 LE(2) 777

Under State ruleings by the Texas Court of Criminal Appeals, the presumption of the prima facie speed law is a burden shifting presumption, see THOMAS 474 SW(2) 692 which is condemned in SANDSTROM and ULSTER COUNTY.

4. Art. 6701d, Sec. 166 TCS et seq. is unconstitutional as violative of substantive due process since it goes into an area prohibited to the Legislature unless definitive standards are set forth and none are.

Texas is committed to the proposition that everyone has a "natural right" to use the streets SAN ANTONIO v FETZER 241 SW 1034. Such rights under the 9th Amendment to the US Constitution may not be interferred with without some rational relationship between the evil sought to be curtailed and the infringement of the right and this must be done reasonably.

Here the curtailment is done only by the "amorphous" terms reasonalbe and prudent; See PAYTON v NY 63 LE(2) 639 at 659.

L.

It would seem that little argument need be given to show that the matters here are substantial Federal Questions. Well over thirty states have prima facie speed laws and the requirment of the 55 mph limit for the receipt of Federal Funds is so well known that repition would only burden this Statement and/or Petition.

Cf. Wright: FEDERAL PRACTICE AND PROCEDURE JURISDICITION Secs. 3564 and 4014.

PRAYER

Relief and Justice are respectfully prayed .

J. P. Darrouzet
ATTORNEY FOR APPELLANT-PETITIONER

NO. 189-711

THE STATE OF TEXAS | IN THE COUNTY COURT AT LAW

VS | NO. 2

John R. Sitton | TRAVIS COUNTY, TEXAS

On this the 18 day of July, A. D. 1980, this cause being called for trial, came the State of Texas, by her County Attorney, and came the Defendant in person and by his attorney, and the Defendant, being duly arraigned, pleaded "NOT GUILTY" to the charge contained in the information, to-wit:

Speeding.

Both parties announcing ready for trial, a jury of six good and lawful persons, to-wit: John B. Lenn and five others, was duly selected, impaneled and sworn, according to law, who having heard the information read and the Defendant's plea of Not Guilty thereto, and having heard the evidence submitted, and having been duly charged by the Court, and having heard the argument of counsel, retired to consider of their verdict, and afterward returned into open court the following verdict, which was received by the Court and is here now entered upon the minutes of the Court, to-wit:

"We, the Jury, find the Defendant John R. Sitton, Guilty and recess for sentencing to August 15, 1980.

John B. Lenn
Foreman of the Jury".

On this the 15 day of August, A. D. 1980,

It is the Order of the Court that the said Defendant John R. Sitton, is guilty of the offense of Speeding, as found by the Jury, and assesses his punishment at Twenty-Five Dollars ($25.00) and Court Costs.

IT IS ORDERED AND DECREED that the State of Texas do have and recover of the said Defendant the amount of such fine and all costs in this prosecution, for which execution may issue; ~~that commitment issue on or before _____, and that, at the time of the issuance of the commitment, Defendant be remanded to the custody of the Sheriff of Travis County, Texas, who shall commit him forthwith to the jail of said County until said period of imprisonment has expired and thereafter until said fine and costs are fully paid or otherwise discharged.~~ Defendant gives verbal notice of appeal.

FILED AT 10:50 A.M.
August 15, 1980

Bob Perkins
JUDGE PRESIDING

DORIS SHROPSHIRE
COUNTY CLERK, TRAVIS COUNTY, TEXAS
By B. Davis Deputy

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